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(62) 7

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)

Criminal Appeal No. 1532 of 1999

MEMORANDUM OF APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE-1973.

APPELLANT (In Jail) : Lawang Sai Mahali son of Ram Mahali, aged about 40 years, occupation-Labour, resident of village Korandha, Police Station Kusmi, District Surguja (M.P.).

7888

Filed on 3/6/99 by Shri R. Pandey Advocate

No. A.B.

Versus

RESPONDENT : State of Madhya Pradesh, through Police Station Kusmi, District Surguja (Mp)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 1532/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. D.R. DESHMUKH, JJ.

9-9-2005

Mr. V.K. Pandey, counsel for the appellant.

Mr. J.D. Bajpayee, Public Prosecutor with Mr. Devesh Verma, Panel Lawyer for the State/respondent.

Heard.

Oral judgment.

By this appeal under Section 374 (2) of the Cr.P.C., the appellant has assailed the judgment of conviction and sentence dated 9-4-1999 passed by the 1st Additional Sessions Judge, Ambikapur, District: Surguja, in Sessions Trial No.199/1996, whereby learned 1st Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life.

The prosecution case, in brief, is that on 1-3-1996 in the evening at about 8.30 p.m. the accused/appellant came to his house and demanded food from his wife Rupin Bai (deceased) on which Rupan Bai left the house. The accused also left the house. After some time, Rupan Bai went to the house of Tijan Ram and informed him that the accused/appellant is quarrelling with her. The accused/appellant also

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

went to the house of Tijan Ram and called Rupan Bai, on which Rupan Bai left the house of Tijan Ram. However, after reaching his house, the accused started abusing Rupan Bai, which was heard by Tijan Ram and at about 12 p.m. in the night Tijan heard the cries of Rupan Bai 'Save Save'. On hearing cries, Tijan along with his wife went to the house of the accused and saw that Rupan Bai was lying in front of her house, she was saying 'Save Save'. On this, Tijan enquired from the accused as to why he has assaulted Rupan Bai on which the accused replied that he had slapped Tijan Bai twice. Thereafter, Tijan and his wife Putti took Rupan Bai inside the house, but after one hour Rupan Bai died, upon which Tijan Ram lodged the report Ex.P-1 at Police Station: Kusmi on which merg intimation Ex.P-2 was recorded.

Head Constable Ram Dev Yadav (PW-11) reached at the scene of occurrence and after giving notice Ex.P-5, prepared the Panchnama of the body of Rupan Bai Ex.P-8, and sent the body of Rupan for post-mortem under Ex.P-15. He also prepared the site plan Ex.P-18. Post-mortem of the body was conducted by Dr. T. Sai (PW-10) who noticed four external injuries on the body of Rupan Bai. After post-mortem, the doctor opined that Rupan Bai died on account of internal haemorrhage and syncope due to rupture of spleen.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Ambikapur, who in turn

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

committed the case to the Sessions Judge, Ambikapur, from where, the 1st Additional Sessions Judge received the case on transfer. Learned 1st Additional Sessions Judge after hearing Additional Public Prosecutor and counsel for the accused, perused the record and was of the opinion that prima facie, offence under Section 302 of the I.P.C. was made out against the accused/appellant. Accordingly, he framed the charge and read over to the accused/appellant. The accused/appellant denied the charge and claimed to be tried.

The prosecution in order to prove the charge against the accused/appellant examined in all 11 witnesses. On the other hand, statement of the accused under Section 313 of the Cr.P.C. was recorded by learned Additional Sessions Judge in which he denied the material appearing against him and stated that he does not know why the prosecution witnesses have deposed against him, and ultimately said that he has been falsely implicated in the crime, he is innocent. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused/appellant in the manner mentioned above.

We have heard Mr. V.K. Pandey, learned counsel for the appellant and Mr. J.D. Bajpayee, learned Public Prosecutor with Mr. D.K. Verma, learned Panel Lawyer on behalf of the State/respondent.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Mr. Pandey, learned counsel for the appellant argued that there is no eyewitness in this case. All the witnesses have turned hostile. As per the medical report, Rupan Bai died on account of rupture of spleen, as the deceased was in the habit of consuming liquor, therefore, on account of consuming liquor her spleen was enlarged. The spleen of Rupan Bai was ruptured on account of her felling on a hard surface, and the deceased also received other injuries. He further argued that this fact finds support from the evidence of Dr. T. Sai (PW-10). Therefore, there is no evidence connecting the accused with the murder of his wife Rupan Bai, as such, the conviction recorded by the trial Court is based on no evidence.

On the other hand, Mr. J.D. Bajpayee, learned Public Prosecutor supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have scanned the prosecution evidence. It is true that PW-1 Tijan Ram brother-in-law of the deceased, PW-2 Putti sister of the deceased, PW-3 Kusan Ram, PW-4 Videshiya father of the deceased and PW-5 Rupdev have turned hostile. Therefore, there is no ocular evidence in this case, in order to connect the accused/appellant with the murder of his wife. Even there is no convincing circumstantial evidence upon which the accused/appellant can be connected with the murder of his wife. Even PW-2 Putti, sister of the deceased, has stated in her cross-

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

examination that relations of the deceased and the accused were cordial. The defence of the accused which appears from the evidence of prosecution witnesses is that he informed Tijan Ram, his brother-in-law, who was residing nearby his house that Rupan Bai received injuries as she fell down on the hard surface.

In this connection, if we examine the evidence of Dr. T. Sai (PW-10), he has stated that out of four external injuries, three injuries were bruises and one was scratch injury. On dissection of the body, spleen was found ruptured and 9th & 10th ribs were also found fractured. In cross-examination, this witness has stated that the injuries, which were found on the body of deceased Rupan Bai, can be caused by fall on a hard surface. He has also stated that on account of consumption of liquor, spleen can be enlarged and enlarged spleen can be ruptured even on less pressure. It has come in the evidence of PW-1 Tijan Ram that all their family members used to consume Handia liquor.

Thus, on one hand, the defence of the accused that the deceased received injuries on account of falling on a hard surface is rendered probable since the Doctor has also opined that the injuries which were found on the body of the deceased could be caused by felling on a hard surface, and the enlarged spleen could be ruptured with less pressure on the same. As against this, there is no evidence

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

from the prosecution side upon which it can be inferred or presumed that the accused/ appellant was responsible for causing these injuries.

In the circumstances, we are of the considered opinion that there is no convincing and clinching legal evidence on record on which the accused can be connected with the murder of Rupan Bai. As such, the finding of conviction recorded by the trial Court cannot be sustained, as the same is not based on any legal evidence.

In the result, the appeal succeeds and the same is allowed. The impugned judgment of conviction and sentence are set aside and the accused/appellant is acquitted of charge under Section 302 of the I.P.C. The appellant is directed to be set at liberty forthwith, if not required in any other case.

In view of this order, M.(Cri.)P.No.1747/2005 stands disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dilip Raosaheb
Deshmukh
Judge

Soma